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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,428

10/07/2005

Douglas John Hughes

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6683

3705

7590

02/13/2008

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EXAMINER

KHAN, AMINA S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

02/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,428	<b>Applicant(s)</b> HUGHES, DOUGLAS JOHN	
	<b>Examiner</b> AMINA KHAN	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 8-28 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 and 20-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8-10,15-19 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is in response to applicant's amendments filed on November 29, 2007.
2. Claims 1, 8-28 are pending. Claims 2-8 have been cancelled. Claims 11-14 and 20-27 have been withdrawn due to a non-elected invention. Claims 1,15 and 28 have been amended.
3. Claims 1,4-10,15-19 and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Drahos et al. (US 6,659,425) in view of "From Rovral to Chipco, but always Green" (<http://www.bayer-escience.co.uk/ChipcoGreenStory.pdf>) for the reasons set forth in the previous office action.
4. Claims 1,8-10,15-19 and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Drahos et al. (US 6,659,425) in view of Forsyth et al. (US 6,541,421) for the reasons set forth in the previous office action.
5. Claims 1,10,15-17 and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bessette (US 2004/0192551) in view of JP 62148405 for the reasons set forth in the previous office action.

***Response to Arguments***

6. Applicant's arguments filed regarding Drahos in view of the Rovral article have been fully considered but they are not persuasive. The applicant argues Drahos only teaches compositions comprising either humic or fulvic acid, not a combination of both. The examiner draws the applicant's attention to column 3, line 22, wherein Drahos clearly teaches a combination of both humic and fulvic acid. The applicant further argues that Rovral teaches a combination of acid blue 9 and a yellow dye, which applicant argues does not meet the limitation of "consists of an acid blue dye". The examiner argues that the applicant's composition recites "consisting essentially of" which permits the inclusion of other components and only a single water soluble dye must consist of acid blue. The "consisting essentially of" language does not necessarily exclude the yellow dye of the Rovral article because "consisting essentially of" renders the composition open to the inclusion of unspecified ingredients which do not materially affect the basic and novel characteristics of the composition, see *Ex parte Davis et al.* (Bd of Appeals), 80 USPQ 448. Applicants have not submitted factual evidence showing that the yellow dye of the Rovral article materially affects the instant invention. Adding the Rovral Green to the compositions of Drahos would provide a composition comprising, humic acid, fulvic acid, acid blue 9 and a yellow dye which meets the instant claims.

7. Applicant's arguments filed regarding Drahos in view of Forsythe have been fully considered but they are not persuasive. The applicant's claims are directed to a

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composition consisting essentially of humic acid, fulvic acid, and an acid blue dye. The intended uses of “imparting green color to foliage” and “diluting with water to an aqueous form suitable for spraying onto foliage” are simply intended uses and do not further contribute to the composition limitations and were given little patentable weight. Drahos and Forsythe are both directed towards biofungicidal compositions. Forsythe teaches the advantages of incorporating an Acid blue dye into the biofungicides to help distinguish them from water. For this reasons one of ordinary skill in the art at the time the invention was made would have been motivated to incorporate the dyes of Forsythe into the biofungicides of Drahos. It is prima facie obvious to combine the two compounds, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi*, 169 USPQ 423 when ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. A person of ordinary skill in the fungicide would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

8. Applicant's arguments filed regarding Bessette in view of JP 62148405 have been fully considered but they are not persuasive. The intended uses of “imparting green color to foliage” and “diluting with water to an aqueous form suitable for spraying onto foliage” are simply intended uses and do not further contribute to the composition limitations and were given little patentable weight. Bessette and Forsythe are both directed towards herbicidal compositions. Forsythe teaches the advantages of

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incorporating an Acid blue dye into the herbicides to help distinguish them from water. For this reasons one of ordinary skill in the art at the time the invention was made would have been motivated to incorporate the dyes of Forsythe into the herbicides of Bessette. It is prima facie obvious to combine the two compounds, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi*, 169 USPQ 423 when ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. A person of ordinary skill in the fungicide would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMINA KHAN whose telephone number is (571)272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M. Douyon/  
Primary Examiner  
Art Unit 1796

/AK/  
January 8, 2008

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